IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 501 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IKRAMUDDIN RIYAZUDDIN SHAIKH

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MS RATNA VORA for Petitioner

SAMIR DAVE, APP, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/04/2001

ORAL JUDGEMENT

None present for the petitioner. Shri Samir Dave for the respondents.

2 By this petition under Article 226 of the Constitution of India the petitioner is challenging the

order of the respondent no.2 dated 6th March 2000 under which order of the respondent no.1 is confirmed. Respondent no.1 under its order dated 3.5.2000 ordered for the externment of the petitioner from the area of Ahmedabad City as well as Ahmedabad Rural, Gandhinagar, Kheda and Mehsana Districts for a period of two years u/s 56(b) of the Bombay Police Act, 1951.

3 The reply to the Special Criminal Application is filed by the respondents. They have contested this matter.

4 The order of the respondent no.1 is there on the record at Annexure-E. The petitioner filed translation of the documents which is at page nos.36A to 36C.

5 This order of the respondent no.1 is wholly perverse. It is really shocking that the appellate authority has not considered the scope and ambit of the appeal. The appellate authority is not sitting there to confirm the order of the subordinate authority. The appeal is to be decided on merits after considering all the contentions raised by the externee and giving its own finding thereon. A mere perusal of the order of the appellate authority gives out that it has not considered the matter on merits but by narrating few facts has recorded its approval with the order of the subordinate authority. This perverse order cannot be allowed to stand. Otherwise, it would amount to negation of the right of the appeal guaranteed to the externee under the Bombay Police Act, 1951.

6 As a result of the aforesaid discussion, this petition succeeds and the order of the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, dated 6th March 2000 is quashed and set aside. The Deputy Secretary is directed to restore the appeal to its original number and after giving opportunity of hearing to the petitioner to decide the same in accordance with law.

7 Rule is made absolute accordingly. The respondents are directed to pay the costs of this petition to the petitioner which is quantified at Rs.2,000/-.

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